

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 513 - HB 1265**

March 11, 2019

**SUMMARY OF BILL:** Enacts the *Fair Accountability and Clarity in Tax Subsidies Act* (Act). Authorizes the Department of Economic and Community Development (ECD) to recover the amount of money, grants, funds or other incentives provided by the Department if any benefitting entity fails to fulfill commitments, including failure to add 100 percent of the committed jobs agreed to or failure to submit annual and baseline reports, as applicable. Provides ECD access to any relevant information and records, confidential or otherwise, of any applicable entity unless such access is denied by state or federal law.

Removes confidentiality protections from certain franchise and excise tax credits and sales and use tax credits for qualified headquarters facilities.

Removes the authority of ECD to award franchise and excise tax credits to qualified business in certain instances.

Removes the authority of ECD to lower the number of jobs that must be created to qualify for a job tax credit.

Requires any business claiming the industrial machinery tax credit, a job tax credit, or qualified headquarters facilities sales and use tax credit to file an annual report with ECD which contains at a minimum, the number of employees of the qualified business based in this state on the last day of the report year and the incremental amount of qualified investments made in the report year.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$501,600/One-Time/FastTrack Fund  
\$138,400/Recurring/FastTrack Fund**

**Other Fiscal Impact – Existing FastTrack appropriations from the General Fund can be used to cover the estimated one-time and recurring increase in expenditures; however this will reduce the extent of funding otherwise available for FastTrack incentives.**

**To the extent the proposed legislation results in additional funding remaining in the FastTrack program due to recovered funds by ECD or reductions in fund disbursement to certain grant recipients, such additional funds could be used to fund the expenditures associated with this legislation and/or future appropriations from the General Fund to the FastTrack program could be reduced.**

**The proposed changes to the tax credit provisions of the current law could impact franchise and excise tax collections. However, the Fiscal Review Committee staff does not have sufficient information to accurately estimate the magnitude or timing of any such impact.**

Assumptions:

- The proposed changes to the tax credit provisions of the current law could impact franchise and excise tax collections. However, the Fiscal Review Committee staff does not have sufficient information to accurately estimate the magnitude or timing of any such impact.
- Pursuant to Tenn. Code Ann. § 4-3-731(a), ECD is required to execute a separate agreement in conjunction with any FastTrack economic development grant or loan that reserves the right of ECD to recover the amount of funds disbursed by ECD if the benefiting person or entity fails to fulfill the commitments made to the ECD.
- Currently, the policy of ECD requires FastTrack economic development grant recipients to meet 90 percent of committed job projections, as provided by such recipients, to avoid a clawback provision before being required to refund the grants, funds or other incentives, as applicable.
- This legislation will require such recipients meet 100 percent of such committed job projections. This legislation will also apply this requirement to all FastTrack grants and loans (infrastructure and job training, in addition to economic development), not just those grants and loans for economic development. Finally, failure to submit the annual and baseline reports by beneficiaries will also be grounds for such clawbacks.
- The Governor's proposed budget for FY19-20 includes \$100,000,000 in state funding for the FastTrack program.
- Increasing the clawback threshold and applying it to all FastTrack grants and loans, could result in an increase in the amount of grants, funds, or other incentives refunded to ECD, after grant recipients are found to have failed to create the number of jobs which were originally projected or fail to meet other requirements.
- The proposed legislation could also result in a decrease in the number of jobs which companies initially project in order to avoid repayment of any grant, fund or other incentives.
- If this were to take place, the amount of funds in the form of FastTrack grants that are disbursed to such grant recipients could be reduced.
- Due to multiple unknown factors, the extent and timing of any such impacts cannot be determined with reasonable certainty. However, to the extent the proposed legislation results in additional funding remaining in the program due to recovered funds by ECD, or a reduction in fund disbursement to certain grant recipients, future appropriations

from the General Fund to the FastTrack program could be reduced proportionally to such amounts recovered and retained.

- The proposed legislation authorizes ECD to, in order to ensure compliance with agreements between ECD and FastTrack beneficiaries and veracity of annual and baseline reports that such beneficiaries are required to file, access any relevant information and records, confidential or otherwise, of any agency unless prohibited by state or federal law.
- ECD is further required to use such available information and records to annually ensure the veracity of annual and baseline reports for at least 50 percent of all outstanding agreements.
- According to ECD, expanding the monitoring, tracking and reporting requirements necessitates a revision of the program which will increase the demand on current legal staff to analyze compliance of up to 500 active FastTrack grants per year.
- ECD will require two additional attorney positions to receive, review, and analyze these additional reports, and to serve as liaisons between other state agencies and grantee community stakeholders and companies.
- According to ECD, it does not have proper IT infrastructure to provide a secure environment for the level of data which includes personal information and private company information, nor does the Department currently have adequate systems to analyze the massive amounts of data which will be received from grant recipients and state agencies.
- Based upon prior IT costs, the one-time increase in state expenditures, estimated to be \$500,000, will be for improving IT systems and acquiring the appropriate data analyzation tools.
- A total recurring increase in state expenditures of \$138,426 [(\$49,440 salary + \$14,773 benefits + \$5,000 travel) x 2 positions]; and a total one-time increase in state expenditures of \$501,600 (\$500,000 IT/data system + \$1,600 for staff equipment).
- Pursuant to Tenn. Code Ann. § 4-3-716(c), money in the FastTrack Fund may be used by ECD for program administration, marketing expenses and program evaluation; however, such expenses must not exceed five percent of the total amount appropriated for the program in any fiscal year.
- ECD's current expenditures are below two percent of the amount allotted to ECD. Therefore, existing FastTrack appropriations will be used to offset the one-time and recurring expenditures incurred by ECD as a result of this legislation. In addition, any savings in the program resulting from this legislation could be used to offset such expenditures.
- The proposed legislation will not require additional appropriations from the General Fund in order to fund such estimated expenditures.

## **IMPACT TO COMMERCE:**

**Other Commerce Impact – Increasing the clawback threshold and applying it to all FastTrack grants and loans, could result in an increase in the amount of grants, funds, or other incentives refunded to ECD from businesses, and thus, decrease the amount of grant funds available for economic development.**

**The proposed changes to the franchise and excise tax credit provisions could impact respective tax collections. As a result, taxpayer liabilities may change. However, Fiscal Review Committee staff does not have sufficient information to accurately estimate the extent or timing of any such impact to commerce.**

### **Assumptions:**

- Increasing the clawback threshold and applying it to all grants, fund, and incentives could result in an increase in the amount of grants, funds or other incentives refunded to the ECD from businesses in this state that are recipients of any such grants, funds, or incentives.
- The extent and timing of any such impacts for grant recipients is unknown due to several unknown factors.
- In addition, the proposed changes to the tax credit provisions of the current law could impact franchise and excise tax collections. However, the Fiscal Review Committee staff does not have sufficient information to accurately estimate the magnitude or timing of any such impact.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/jdb